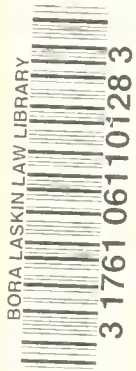




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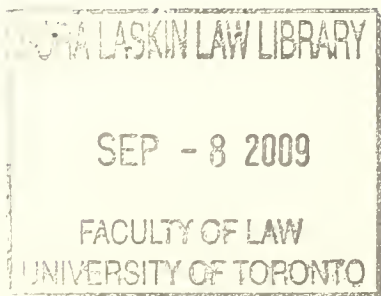


RESTITUTION

2009-2010

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* English version by Gerhard Dannemann, in Markesinis, Lorenz, Dannemann, *The German Law of Obligations* v. 1 (The Law of Contracts and Restitution: A Comparative Introduction 789 (1997)).

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